

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**BENNIE DAVID GUY  
ADC #72770**

**PETITIONER**

**V. CASE NO. 5:12CV00092 JMM**

**RAY HOBBS, DIRECTOR,  
ARKANSAS DEPARTMENT OF CORRECTION**

**RESPONDENT**

**ORDER**

Pending before the Court are the Partial Report and Recommendation from Magistrate Judge H. David Young, Respondent's objections which incorporates a Motion to Convert the pending Motion to Dismiss to a Motion for Summary Judgment.

The Magistrate Judge's proposed findings and recommendations to deny Respondent's Motion to Dismiss were based upon Petitioner's allegation that he was granted parole in 2009. Respondent has submitted evidence that Petitioner was not granted parole in 2009. Based upon this new evidence, Respondent seeks to convert the pending Motion to Dismiss to a Motion for Summary Judgment.

Because the Magistrate Judge did not have the benefit of this evidence before issuing his findings and recommendations and because the Respondent seeks to convert the pending Motion to Dismiss to a Motion for Summary Judgment, the Court finds the Magistrate Judge's proposed findings and recommendation moot and refers the case back to the Magistrate Judge for appropriate action.

IT IS SO ORDERED this 27 day of April, 2012.

  
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**James M. Moody**  
United States District Judge